

OFFICIAL GAZETTE



GOVERNMENT OF GOA

SUPPLEMENT

GOVERNMENT OF GOA

Department of Labour

Notification

No. 28/18/2007-LAB/940

The following Award passed by the Industrial Tribunal of Goa, at Panaji-Goa, on 12-9-2007 in reference No. IT/41/96 is hereby published as required by Section 17 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947).

By order and in the name of the Governor of Goa.
Hanumant T. Toraskar, Under Secretary (Labour).

Pervorim, 8th October, 2007.

IN THE INDUSTRIAL TRIBUNAL-CUM-LABOUR
COURT-I AT PANAJI

(Before Dilip K. Gaikwad, Presiding Officer)

Case No. IT/41/96

Workmen

Rep. by the Secretary,
Bicholim Urban Co-op. Bank
Employees Union,
C/o Bicholim Urban Co-op. Bank Ltd.,
Ponda, Goa.

... Workmen/Party I (1)

The General Secretary,
All Goa Co-op. Bank Employees
Federation,
Gurudutt Building, 3rd Floor,
Panaji, Goa.

... Workman/Party I (2)

V/s

Bicholim Urban Co-op. Bank Ltd.,
HO: Nandan,
Near Town Centre
Bicholim, Goa.

... Employer/Party II

Party I(1)/Union not appeared.

Party I(2) Federation is represented by Subhash Naik.

Party II is represented by Adv. G. K. Sardesai.

A WARD

(Passed on this 12th day of September, 2007)

This is a reference under Section 10(1)(d) of the Industrial Disputes Act, 1947 (hereinafter in short referred to as the said Act, 1947).

1. Facts giving rise to present reference, which has background of termination of service of 72 workmen in one stroke of pen stated in brief, are as follows:-

The Government of Goa in exercise of powers conferred on it by Section 10(1)(d) of the said Act, 1947, under order dated 27-6-1996 has referred to this Industrial Tribunal following dispute for adjudication:

i Whether the action of the management of the Bicholim Urban Co-operative Bank Ltd., Bicholim, Goa, in terminating the services of the 72 workmen whose names are shown in Annexure hereto w.e.f. 12-6-1995 is legal and justified?

ii If not, to what relief the workmen are entitled?

2. In response to notices, Party I(2) and Party II put their appearance in this Industrial Tribunal. Party I(1) did not appear. The Party I(2) presented its claim statement which runs into 34 typed pages at Exb. 19. It appears from the claim statement that the Party II which is Co-operative Bank duly registered under the Maharashtra Co-operative Societies Act, 1960, as applied to the State of Goa had appointed workmen of serial number 1 to 53, 71 and 72 as clerks, workmen of serial No. 54 to 67 as peons and workman of serial number 68 as watchman in its establishment by following

prescribed procedure including advertisement, written test and oral interview etc. Some of them were appointed in the year 1993, while the remaining in the year 1994. The Party II after their appointments did not prepare their seniority list. All of them had completed service of more than 240 days. They were working honestly and efficiently at the places where they were posted by the Party II. One Harish Zantye took over charge as Chairman of the Party II on 12-6-1995. He had differences with earlier Chairman and Managing Director of the Party II. The Party II terminated services of these 72 workmen w.e.f. 12-6-1995 without assigning reasons. Even after termination of their services, employees who were junior to them continued to work. The Party II while terminating services of these 72 employees did not comply with provisions contained in Sections 25(F) and 25(G) of the said Act, 1947. The Party II has newly recruited 80 employees. These 72 employees whose services are terminated w.e.f. 12-6-95 are not given opportunity while recruiting new employees. The Party II has committed breach of provision contained in provision 25(h) of the said Act, 1947. Therefore, these 72 workmen approached the Party I(2) who in turn raised a dispute with the Party II. As the Party II did not comply with demand made by the Party I(2) on behalf of these 72 workmen, the Party I(2) by its letter dated 25-7-95 raised a dispute before Labour Commissioner who in turn called meetings of representatives of the workmen and of the Party II for conciliation. Some of these 72 workmen were members of the Party I(1)/Union which had also raised a dispute before the Labour Commissioner. Conciliation proceedings held by the Labour Commissioner ended in failure as a result, the Government of Goa vide its order dated 27-6-1996 has made a reference to this Industrial Tribunal for adjudication as stated earlier.

3. The Party I(2) by presenting claim statement has prayed for reinstatement of these 72 employees in service with full back wages and with continuity in service.

4. The Party II in answer to the claim statement filed its written statement which runs into 85 typed pages at Exb. 21. It appears from written statement that the Party I(2) does not represent employees of the Party II and therefore, the Party I(2) has no *locus standi* to appear in this matter. There is a settlement in between the Party I(1) on the one hand and the Party II on the other. The settlement is binding on both parties. Therefore, the reference does not survive. Pursuant to directions given by the State Government of Goa under Sec. 79(A) of the Maharashtra Co-op. Societies Act, 1960 as applied to the State of Goa, the Party II has constituted a staff assessment and selection committee comprising of Chairman, Managing Director and representative of the Registrar for Co-operative Societies on 11-7-93 to assess its staff requirement. The Committee considering applications received from candidates and after holding written test and oral interviews prepared merit list of 125 candidates for the post of clerks, of 17 candidates for the post of peons and of 8 candidates for post of watchmen. The then Managing Director, Dilip Kenkre

sent copy of resolution No. 2 purported to have been passed by the Board of Directors on 28-7-93, alongwith forwarding letter dated 28-7-93 to the Registrar for Co-op. Societies to seek approval for appointment of 65 clerks, 17 peons/watchmen and 5 officers. In fact, such a resolution was never passed by the Board of Directors on 28-7-93 or thereafter. The resolution which was sent by the Managing Director to the Registrar for Co-operative Societies was manufactured, fabricated and/or forged. The Registrar for Co-op. Societies under letter dated 29-7-93 granted approval for appointment of 65 clerks, 17 peons/sub-staff and 5 officers in establishment of the Party II. These appointments were required to be made from merit list prepared by the Staff Assessment and Selection Committee and which were duly approved by the Registrar for Co-operative Societies. The approval letter dated 29-7-93 sent by the Registrar for Co-op. Societies was never placed before Board of Directors. On the very day, i.e. on 29-7-93, the Managing Director issued appointment letters to 69 candidates as clerks, to 10 candidates as peons and to 5 candidates as watchmen ignoring merit list prepared by the Staff Assessment and Selection Committee. In addition to these appointments, the Managing Director issued appointment letters to other 56 candidates on post of clerks, and to other 15 candidates on the post of peons/sub-staff even though he was fully aware that these appointments of 71 candidates were in excess of posts approved by the Registrar for Co-operative Societies under letter dated 29-7-93. These appointments of 56 candidates on the post of clerks and of 17 candidates on the posts of peons/sub-staff are without knowledge of Board of the Directors of the Party II and those are illegal and without procedure. The Party II has taken action against the Managing Director before the Assistant Registrar for Co-op. Societies and also by filing criminal case in the Court of Judicial Magistrate First Class at Bicholim. Senior Auditor for Co-op. Societies had pointed out in his special report submitted to the Registrar for Co-op. Societies that 56 clerks and 17 peons/sub-staff are illegally recruited in the establishment of the Party II during the years 1993-94 and 1994-95. He further pointed out in his special report that out of these 56 clerks, 23 were not from the merit list and 2 were of more than maximum age limit at the time of appointment. On basis of the special report, the Registrar for Co-op. Societies by letter dated 31-5-95 directed the Party II to terminate the services of the said 56 clerks and of the said 15 peons/watchmen on or before 12-6-95 without fail and to submit compliance report. In compliance with this letter, the Party II has terminated the services of the workmen by making payment of one month's wages in lieu of notice and of compensation prescribed under the said Act, 1947. The workmen, 72 in number whose services are terminated w.e.f. 12-6-95 are from the list which is fraudulently prepared. They were parties to the fraud and illegality which has caused huge monetary loss to the Party II. Action taken by the Party II in terminating their services is proper, fair and in accordance with the law in force. Even though provisions of Sec. 25(F) of the said Act, 1947 was not attracted, by way of precaution, the Party II has paid

one month's wages in lieu of notice and compensation to the terminated employees. It has followed provisions of Sec. 25(F) and Sec. 25(G) also of the said Act, 1947. On these and the above grounds, the Party II has prayed for rejection of the reference.

5. Neither the Party I(1) nor the Party I(2) filed Rejoinder.

6. On basis of pleadings of both parties, the then learned Presiding Officer framed issues on 18-9-98 at Exb. 24. The issues are recast by me at Exb. 51. The recast issues are as follows:-

- 1 Whether the Party I(2) has locus standi to represent the workmen?
 - 2 Whether there is a valid and binding settlement between Party I(1) and Party II in respect of the present dispute?
 - 3 Whether recruitment of workmen was without procedure and illegal?
 - 4 Whether act of Party II in terminating services of the workmen w.e.f. 12-6-95 is legal and justified?
 - 5 Whether the workmen are entitled to the reliefs as prayed for?
 - 6 What Award?
7. My findings on the above issues are as follows:
- 1 In the negative.
 - 2 In the negative.
 - 3 In the affirmative.
 - 4 In the affirmative.
 - 5 In the negative.
 - 6 As per final order below.

REASONS

8 *Issue No. 1:* The Party II is a Co-operative Bank duly registered under the Maharashtra State Co-op. Societies Act, 1960 as applied to the State of Goa. It has its bye-laws. Xerox copies of the bye laws and which is referred in oral evidence of Carlos Figueiredo on behalf of the Party II is at Exb. E-1. It is admitted fact that the Party II had recruited workmen of serial number 1 to 53, 71 and of serial number 72 as clerks, workmen of serial number 54 to 67 as peons and workman of serial number 68 as watchman in its establishment. It is also admitted that the Party II has terminated services of all these 72 employees w.e.f. 12-6-95 under letters of which xerox copies are produced at Exb. W-1 colly. These xerox copies are referred by representative in his oral evidence and who is examined on behalf of Party I(2). All these 72 workmen approached the Party I(2)-Federation, who in turn raised a dispute before the Party II and then before the Labour Commissioner. The workmen are represented by the Party I(2) in this proceeding also.

9. Representative who is the General Secretary of the Party I(2) argued that the Party I(2) has pursued

demand of the dismissed workmen from the beginning. Therefore, the Party I(2) has locus standi to represent the dismissed workmen in this proceeding also. He relied upon the decision given by the Hon'ble High Court of Bombay in case of *Maharashtra General Kamgar Union v/s State of Maharashtra and others reported in 1995 II LLN 532.*

10. Learned Advocate of Party II in reply argued that the Party I(2) is a Federation of which only Trade Unions representing workmen are supposed to be members. The workmen cannot be members of the Federation. The Party I(2) which is the Federation cannot represent the workmen directly. The Party I(2) is not a registered Federation also. Therefore, according to him, the Party I(2) cannot represent the workmen on whose behalf it has filed the claim statement. He relied upon decision given by the Hon'ble High Court of Bombay (Nagpur Bench) in case of *National Organization of Bank Workers Federation of Trade Unions and Union of India and others reported in 1993 II LLJ 537.*

11. In case of Maharashtra General Kamgar Union, the petitioner was a registered Trade Union and it was acting on behalf of 25 workmen of second respondent company which was engaged in the business of manufacturing Synthetic Fibre at Thane. Employer had objection to the reference of dispute for adjudication as it was not supported by a resolution of executive committee of union. The Hon'ble High Court held that the objection cannot be sustained being a hyper-technical one, that the union had been pursuing the demand of dismissed workmen from beginning to end and that even otherwise, appropriate Government having been appraised of the existence of the dispute that itself would give jurisdiction to appropriate Government to refer the dispute under section 10(1)(c).

12. From facts of reported case of Maharashtra General Kamgar Union, referred to above, it can easily be seen that it was registered union. Objection raised by the employer was to the reference of the dispute for adjudication and not in respect of representation of the workmen. In the present case, objection of the employer is to the representation of the workmen by the Party I(2) which is not duly registered. Thus, facts of this reported case are different from that of the present one.

13. It is not in dispute that the Party I(2) is pursuing demand of the dismissed workmen from the beginning. The Party II admitted in para number 88 of the written statement (Exb. 21) that the Party I(2) represented the workmen before the Conciliation Officer and that the reference is made at the instance of the Party I(2) to this Industrial Tribunal. Written statement produced at page No. 61/C in the conciliation proceedings held by the Labour Commissioner (Exb. W-2) supports that the Party I(2) had represented the workmen, 72 in number, before the Labour Commissioner. Besides it, there are authority letters at Exb. W-13 colly which show that workmen 24 in number authorized the representative who is the General Secretary of All Goa Co-operative

Bank Employees Federation to represent them in the proceedings pending in this Industrial Tribunal.

14. Representative of the Party I(2) admitted in his cross examination that individual employee of Co-operative Bank cannot be a member of the Federation. He further admitted that the Party I(2)-Federation is not registered under the Trade Unions Act. Under these circumstances, it will have to be seen as to whether the Party I(2) has locus standi to represent the workmen. In this connection, I can do no better than to have reference of decision given by the Hon'ble High Court of Bombay (Nagpur Bench) in case of *National Organisation of Bank Workers Federation of Trade Unions*, alluded Supra, and which is placed before me by learned Advocate of Party II. In this reported case, the petitioner was a Federation of Trade Unions. The Petitioner was not a registered body under Trade Unions Act, 1926. Question which arose for consideration of Division Bench of the Hon'ble High Court was whether the appellant federation which is not a registered body can raise an industrial dispute and whether it is competent to file a Writ Petition. The Division Bench of the Hon'ble High Court of Bombay (Nagpur bench) held that:

"The appellant is not a registered body under the Trade Unions Act, 1926. Hence, it is not a Trade Union within the meaning of Sec. 2(b) of the Act. The definition includes any Federation of two or more unions. In the absence of it being a registered body, the appellant is incompetent to raise a demand on behalf of the employees so as to fall within the scope and ambit of industrial dispute as defined under section 2(K) of the I. D. Act. If the appellant is not in a position to raise an industrial dispute, it has no locus standi to seek the privilege of negotiating these demands, which is the privilege of only duly registered Trade Union or a group of workmen under the I. D. Act."

The above decision given by the Hon'ble Division Bench is squarely applicable to the present case. Relying upon this decision, I hold that the Party I(2) which is not a registered union or registered Federation has no locus standi to represent the workmen under the present reference. I do not agree with the argument advanced by representative of the Party I(2). My answer to the issue is in negative.

15. *Issue No. 2:* Party II raised a plea in its written statement that there is a valid and binding settlement between the Party II and Party I(1) in respect of subject matter of the present reference, and therefore, the reference does not survive.

16. Xerox copies of settlements, two in number, dated 8-5-96 and dated 24-2-97 and which are referred by Carlos Figueiredo in his evidence and who is examined on behalf of the Party II are produced at Exb. 18 and at Exb. 19 respectively. The first settlement is in between representative of management and representative of the workmen. It is in the matter of termination of services of 72 clerks and sub-staff on

various grounds as spelt out in notice of termination. Clause 1 states that the Union appreciates and confirms re-employment of 21 clerks and 9 sub-staff after assessing required strength manpower and merit list. Under clause 2, the union agreed that the claim of the rest of the workmen does not survive and the dispute dated 15-6-95 accordingly stands settled.

17. Another settlement dated 23-2-1997 (Exb. E-19) is between the representative of the management and representative of the employees of the Party II. It is in respect of increase in wages of the clerks and sub-staff. Under clause 7, parties to the settlement have reiterated that the terms of settlement dated 8-5-96 in respect of the terminated employees and treated terms of the said settlement as re-produced and adopted and confirmed.

18. Representatives who entered into the above settlements on behalf of the employees with representatives of the management of the Party II acted in capacity of representatives of the Bicholim Urban Co-operative Bank Employees Union, which is the Party I(1). It is pertinent to note that the Party I(1) never appeared in this proceeding before the Industrial Tribunal. It is not known as to whether the Party I(1) Union is or is not in existence and as to whether it is or is not registered under the Trade Unions Act, 1926. There is nothing in evidence to show that the workmen, 72 in number, who are under the reference had given authority to representatives of the Party I(1)-Union to enter into settlement on their behalf with representatives of the Party II as rightly pointed out by the representative of the Party I(2). Names of these 72 workmen are not appearing in any of these two settlements. The witness, Carlos Figueiredo examined by the Party II does not know nature of the dispute raised by the Party I(1)-Union under letter dated 15-6-95 of which reference is made in the settlement dated 8-5-96. Considering all these circumstances, I hold that it will not be proper and correct to jump to conclusion that the settlements dated 8-5-96 and 24-2-97 are valid and binding settlements in respect of the present dispute. Learned Advocate of the Party II during the course of his argument did not press this issue which in my view he has rightly done. I therefore, answer the issue in the negative.

19. *Issue No. 3:* The Party II which is duly registered Co-operative Bank is governed by provisions contained in the Maharashtra Co-op. Societies Act, 1960 as applied to the State of Goa. The then Registrar of Co-op. Societies and ex officio Joint Secretary to Government of Goa issued order on 18-6-1993 by exercising powers conferred on him under Section 79-A of the said Act, 1960 directing all the specified Co-op. Societies and the major Co-op. institutions in the State of Goa with a view to secure proper management of the business of the Society generally and for preventing affairs of the societies being conducted in a manner detrimental to the interest of the members, depositors and creditors. Witness Carlos Figueiredo examined on

behalf of the Party II has made reference of this order in his oral evidence. Xerox copy of the order is at Exb. E-2. Clause number (a) (b) and (c) from this order are material. Therefore, I am reproducing these three clauses as follows:-

- a Whenever new posts are to be created, the necessity and the workload should be assessed by a committee namely, the Staff Assessment and Selection Committee consisting of three members namely, the Chairman, Managing Director, Chief Executive of the Society and the Representative of the Registrar. Such committee shall submit a detailed report about the creation of posts and considering such report, the Managing Committee may create any number of the posts and after obtaining prior approval of the registrar, the necessary action shall be taken by the management to fill up the posts.
- b Recruitment Rules should be framed with the approval of the Registrar and posts will be filled up as per the Recruitment Rules. Where such Recruitment Rules are not framed, posts will be filled as per the criteria fixed by the Board for the time being. The post will be filled considering recommendations of aforesaid Staff Assessment and Selection Committee by way of direct recruitment and promotion.
- c The instructions of the Government about the notifying the vacancies to the Regional Employment Exchange shall invariably be followed. If the Employment Exchange fails to provide the names within a specified time of not less than three weeks, applications from candidates for direct recruitment shall be invited by advertising in atleast two local dailies giving atleast three weeks time from the date of advertisement.

20. Xerox copy of minutes of the meeting held by Staff Assessment and Selection Committee of the Party II during period from 4-7-93 to 27-7-93 is produced by the Party II at Exb. E-3. It appears therefrom that there were some expected vacancies of clerks and sub-staff in establishment of the Party II. Therefore, the Party II had asked the Employment Exchange, Paraji, to provide names for these posts within three weeks. The Employment Exchange failed to provide the names, and therefore, the Party II invited applications for the posts of clerks and sub-staff by publishing advertisement in local dailies by name "Navhind Times" and "Gomantak". Applications for the post of clerks and of sub-staffs were received from 211 and 43 candidates respectively coming to total of 254. All of them appeared for written test. They were called for interview on 26-7-93. Thereafter, the Staff Assessment and Selection Committee prepared merit list of 125 candidates for the post of the clerks and combine merit list of 17 candidates for the post of peons and of 8 candidates for the post of watchmen. Xerox copies of

these two merit list are alongwith xerox copy of the minutes of the meeting produced at Exb. E-3. The Committee recommended names of these 125 candidates for the post of clerks including waiting list, of 17 candidates for the post of peons and of 8 candidates for the post of watchmen as per the merit list.

21. Xerox copy of the letter dated 28-7-93 produced at Exb. E-5 shows that report submitted by the Staff Assessment & Selection Committee was placed before and was discussed in the meeting of Board of Directors of the Party II. The Committee recommended for creation of 65 posts of clerks, of 5 posts of officers and of 17 posts of sub-staff. The report submitted by the Staff Assessment & Selection Committee is approved in meeting of Board of Directors on the very day i.e. on 28-7-1993. Therefore, the then Managing Director under this letter (Exb. E-5 colly) requested the Registrar for Co-operative Societies, Government of Goa, to accord approval for filling up 65 posts of clerks, 5 posts of officers and 17 posts of sub-staff. Xerox copy of Resolution No. 2 passed in the meeting of Board of Directors held on 28-7-1993 is alongwith that of the said letter. In fact, such resolution was never passed in meeting of the Board of Directors. This fact becomes clear from para No. 1 of special report submitted by Senior Auditor of Co-operative Societies (Daily) Ponda Goa, to the Registrar for Co-operative Societies, Government of Goa, in respect of working of the Party II for the year 1993-1994. Xerox copy of this special report is alongwith xerox copy of letter produced at Exb. E-11 colly.

22. On basis of letter dated 28-7-1993 sent by the Managing Director and of which xerox copy is produced at Exb. E-5 colly, the Registrar for Co-operative Societies, Goa, under his letter dated 29-7-1993 conveyed to the Managing Director of the Party II approval to recruit staff consisting of 5 officers, 65 clerks and 17 peons by following usual procedure and directives issued under Sec. 79-A, under order dated 18-6-1993 (Exb. E-2). Xerox copy of the approval letter is at Exb. E-7.

23. After receipt of the approval letter (Exb. E-7) from the Registrar of Co-operative Societies Goa, the then Managing Director, Dilip Kenkre issued appointment letters on the very day i.e. on 29-7-1993 to 5 candidates on the post of officers, to 125 candidates on the post of clerks and to 32 candidates on the post of sub-staff. This fact is admitted by him in para No. 17 of his cross examination (Exb. 55). He is examined as a witness by the Party I. Xerox copies of appointment letters issued by him and which are styled as offer of employment as pointed out by the witness Carlos Figueiredo examined by the Party II are at Exb. E-8 colly. Thus, it can be seen that the Managing Director has issued appointment letters to 60 candidates in addition to 65 for the post of clerks and to 15 candidates in addition to the 17 candidates for the post of peons. The Managing Director issued appointment letters to the additional post of 60 clerks and of 15 peons without their being approval from the Registrar of Co-op. Societies, Goa. The workmen represented by Party I(2) under the

present reference are from these additional posts of 75 candidates to whom the appointment letters were issued by the Managing Director, Dilip Kenkre without getting approval from the Registrar of Co-op. Societies, Goa. Appointments of these 72 workmen are under challenged.

24. It appears from the affidavit filed by representative in evidence (Exb. 45) on behalf of the Party I(2) that, the 72 workmen are appointed by the Party II after following due procedure including advertisement, calling applications for the post of clerks, peons and watchmen, written test, oral interviews and preparation of merit list by the Staff Assessment & Selection Committee. There are also affidavits of workmen Mahableshwar Mishal at Exb. 46, of Kishore Shetye at Exb. 47, and of Nilesh Parab at Exb. 48 to support that such procedure was adopted by the Party II before making appointments on the post of clerks and peons. Evidence of the representative and of these four workmen is supported by the then Managing Director, Dilip Kenkre by filing affidavit in evidence (Exb. 55) on behalf of the Party I(2). Therefore, appointment of these 72 workmen are legal and according to procedure.

25. Representative of the Party I(2) argued that evidence led by the Party I(2) makes it clear that the Party II appointed these 72 workmen on their respective posts by following due procedure. Therefore, according to him, it will have to be held that the appointments of these 72 workmen are legal and according to procedure. To substantiate his argument he relied upon the decision given by the Hon'ble High Court of Bombay (Nagpur Bench) in case of *Chandrapur District Central Co-operative Bank Ltd., Chandrapur, petitioner v/s Industrial Court, Nagpur and another respondents reported in 1996 (1), Bom. L.C. 161*.

26. Learned Advocate of the Party II in reply argued that appointments of these 72 workmen are without getting approval from the Registrar of Co-op. Societies, Goa. These appointments are clearly in breach of directives given in the order issued by Registrar for Co-op. Societies and ex officio Joint Secretary of Government of Goa, under Sec. 79 of the said Act, 1960. Therefore, according to him, it cannot be said that the appointments of these 72 workmen are legal and according to law. He relied upon decisions given by the Hon'ble Supreme Court in case of *A. Umarani, appellant v/s Registrar, Co-op. Societies and others respondent*, reported in (2004) 7 SCC 112, and by the Hon'ble High Court of Judicature at Bombay (Aurangabad Bench) in case of *Keval Bana Gopal Mali and others appellant v/s Dhule Municipal Council, respondent reported in 1998 II CLR 842*.

27. Before proceeding further, one more submission made by the representative of Party I (2) requires to be dealt with. He submitted that the Party II out of the 72 workmen, has re-appointed 28 in the year 1995. Workman, Anand Patil has separately raised a dispute and on that dispute, reference bearing No. IT/51/97 is pending before this Industrial Tribunal. One more workman, Anandi Mahambre is removed from service on account of

overage. Therefore, he urged not to decide the present reference in respect of these 30 candidates.

28. Xerox copy of list produced at Exb. E-21 supports that the Party II has appointed 28 workmen out of the terminated 72 in the month of July, 1995. It is not in dispute that, reference in respect of termination of the workman, Anand Patil is pending in this Industrial Tribunal, and that, workman, Anandi Mahambre is removed from service on account of overage. It should be remembered that the reference which is made by the Government of Goa to this Industrial Tribunal for adjudication is in respect of termination of services of the 72 workmen. The Industrial Tribunal cannot narrow scope of the reference. I, therefore, do not agree with that what is urged by representative of Party I(2).

29. In case of *Chandrapur District Central Co-op. Bank Ltd., Chandrapur*, termination of services of complainants were challenged on the ground that the appointments were made by Ex-Chairman who had no such powers and without approval of Board of Directors, and therefore, the appointments were illegal. It was not mentioned in termination order that the appointments given to complainants suffered from discrepancies, anomalies and irregularities etc. The Petitioner-Bank did not prove illegality in appointments of the complainants. With this background, it is held that appointments of the complainants were not illegal.

30. In the present case, the appointment letters were issued to these 72 workmen by the then Managing Director. Though the Managing Director has pointed out in his cross examination that he issued appointment letters to these 72 workmen as per direction given by the Board of Directors of the Party II, there is absolutely no iota of documentary evidence in this connection. In absence of documentary evidence it is difficult to place reliance on evidence of the Managing Director that he issued appointment letters to these 72 workmen as per directions of the Board of Directors of the Party II. He issued the appointment letters to these 72 candidates without getting approval to their posts from the Registrar of Co-op. Societies, Goa. He admitted in para No. 18 of his cross examination that as Managing Director he sent appointment letters to the candidates who are in addition to the strength sanctioned by the Registrar under the letter dated 29-7-93, and that, the appointments of the candidates who are more than the sanctioned strength are illegal. These facts, in my view, are clearly distinguishable from that of the reported case of *Chandrapur, District, Central Co-op. Bank Ltd., Chandrapur* and which is relied upon by the representative of the Party I(2). With respect, I am of the opinion that the decision from this reported case is not applicable to hold that, appointments of these 72 workmen are not illegal.

31. It appears from facts of the reported case of *A. Umarani*, that a large number of employees i.e. about 39% of the total strength of the employees of the Co-op. Societies in the State of Tamil Nadu were appointed

without notifying vacancies to the Employment Exchange and without following other mandatory provisions of the Act and the Rules framed thereunder to the recruitment. A large number of appointees furthermore did not have requisite educational qualification or other qualification like Co-op. Training etc. The reservation policy of the State was not followed. The recruitments were made beyond the permissible cadre strength. The Hon'ble Supreme Court held that, when appointments were made in contravention of mandatory provisions of the Act and statutory rules framed thereunder and in ignorance of essential qualifications, the same would be illegal and cannot be regularized by the State.

32. In case of *Keval Bana Gopal Mali and others*, President of Respondent Municipal Council had appointed 173 persons to various un-sanctioned post in the Council without calling for applications and without interviews or tests. Chief Officer did not allow them to join on the ground that their appointments were illegal. The appellants and few others approached the Labour Court and obtained from the Labour Court an interim relief of direction to respondent to allow them to join duty. The Industrial Court in revision set aside the said order. Writ Petition which was move against the order of the Industrial Court came to be dismissed. In appeal, the Hon'ble Supreme Court held that all such so called appointments which are made by then President who had no powers and authority to give such orders without following the recruitment rules and selection process are illegal.

33. In the present case, the Managing Director issued appointment letters to these 72 workmen without getting consent/approval in writing from the Board of Directors of the Party II and also without getting prior approval from the Registrar of Co-op. Societies, Goa. Issuance of the appointment letters by the Managing Director to these 72 candidates, specially without getting prior approval of the Registrar for Co-op. Societies is in breach of directives given in the order issued by the Registrar for Co-op. Societies and ex officio Joint Secretary, Government of Goa, and of which xerox copy is produced at Exb. E-2. These facts lead to an irresistible conclusion that the recruitment of these 72 candidates is without procedure and illegal. The argument advanced by representative of Party I(2) is not acceptable. Considering above facts of this case and relying upon the decisions given by the Hon'ble Supreme Court in case of *A. Umrani* and by Hon'ble High Court of Judicature at Bombay (Aurangabad Bench) in case of *Keval Bana Gopal Mali and others* alluded Supra, I agree with argument advanced by learned advocate of Party II. My answer to the issue is in affirmative.

34. *Issue No. 4:* Action of the Party II in terminating services of the 72 workmen w.e.f. 12-6-95 is challenged by the Party I(2) mainly on the grounds that: (1) the Party II neither issued show cause notice and chargesheet nor held departmental inquiry against the workmen before termination of their services; (2) the Party II while terminating services of 72 workmen

violated principles of natural justice, and the Party II did not comply with provisions contained in Sec.-F, Sec. 25-G and Sec. 25-H of the said Act, 1947.

35. Representative of the workmen under the reference argued that the Party II had appointed these 72 workmen by following due procedure prescribed for recruitment. All the 72 workmen have completed service of more than 240 days. It is the Party II who has terminated services of these 72 workmen in one stroke of pen immediately after change in office bearers of the Party II. It was necessary for the Party II to give sufficient opportunity by issuing show cause notice to these 72 workmen and then to hold departmental inquiry before termination of their services. Nothing such has been done by the Party II. Therefore, according to him, termination of their services is not only illegal and unjustified but it is also against principles of natural justice. In support of his arguments, he relied upon decision given by the Hon'ble High Court of Bombay (Nagpur Bench) in case of *Chandrapur District Central Co-op. Bank Ltd., Chandrapur, reported in 1996 (1) Bom. L. C. 161* of which reference is made earlier.

36. To counter argument advanced by representative of the workmen, learned advocate of the Party II pointed out in his argument that the appointment of these 72 workmen are illegal and void-ab-initio. There was no purpose in issuing show cause notice and to hold departmental inquiry against these workmen. Services of these workmen are terminated as per provisions contained in the said Act, 1947. The Party II has paid one month's wages in lieu of notice and retrenchment compensation prescribed under Section 25-F of the said Act, 1947, even though it was not necessary to make such payment. When there is termination of service under provisions of the said Act, 1947, principle of natural justice does not come into picture. There is no evidence to show that the Party II has committed breach of provisions contained in Sections 25-G and 25-H of the said Act, 1947. He further argued that the Party II has terminated services of these 72 workmen in compliance with directions given by the Registrar of Co-op. Societies, Goa, under his letter dated 31-5-1995. Therefore, in his opinion, it will have to be held that action of the Party II in terminating services of these 72 workmen is legal and justified. He relied upon decision given by the Hon'ble High Court of Kerala in case between *Eranalloor Service Co-op. Bank Ltd., and Labour Courts and others reported in 1986 I LLJ 492*, by the Hon'ble Supreme Court in case of *State of U. P. v/s Neeraj Awasthi and others, reported in (2006) I, SCC 667* and by the High Court of Judicature at Bombay in case of *Maharashtra State Co-op. Bank Ltd., Mumbai, petitioners v/s Namdev Tukaram Pednekar and another, respondents, reported in 2007 II CLR 980*.

37. In case of *Chandrapur District Central Co-op. Bank Ltd., Chandrapur*, termination of services by petitioner, a Co-op. Bank of respondent No. 2 as clerks and peons was challenged on the ground of illegal appointment. It was held by the Labour Court and Industrial Court that

the selection of the complainants who appeared before the Selection Committee which selected and appointed them were legally appointed. The Hon'ble High Court of Bombay pleased to hold that it cannot be said by the petitioner bank that in absence of any approval by Board of Directors to the selection list, the appointments of complainants were illegal and contrary to law and principles of natural justice were not applicable or that the appointments being temporary, no notice for hearing was required to be given.

38. I have already held that facts of the case Chandrapur District Central Co-op. Bank Ltd., Chandrapur, are different from that of the present one, and therefore, decision from this reported case is not helpful to decide fate of termination of services of the present 72 workmen. In case of Eranalloor Service Co-op. Bank Ltd., person ineligible to be appointed for want of requisite qualification was appointed as a salesman on temporary basis subject to approval of Registrar of Co-op. Societies. Request for appointment of the person as salesman was turned down by the Registrar. Therefore, the Society resolved to terminate the services of the said salesman. Revision petition filed against resolution of the society was also turned down by the Registrar on the view that the appointment was contrary to rules. The Labour Courts passed Award and directed reinstatement of the employee. The Society challenged the Award. The Hon'ble High Court of Kerala held that:

"Appointments made without obtaining the prior approval of the Registrar of Co-op. Societies will be declared as appointment made without the authority of law and hence ab-initio void. The contract of service in such cases can be terminated even without an inquiry. Such appointment cannot be said to be voidable because Rule 186 of the Co-op. Society Rules, prohibit appointment of persons not possessing the prescribed qualification without the prior approval of the Registrar of Co-op. Societies".

39. I am aware that in the above reported case of Eranalloor Service Co-op. Bank Ltd., termination of service was of such person who was not eligible to be appointed but was appointed on the post of salesman. This fact is different from that of the present one. However, it should be noted that the appointment was without obtaining prior approval of the Registrar of the Co-op. Societies and therefore the Hon'ble High Court of Kerala held that the appointment is without the authority of law and hence, it is ab-initio void.

The Hon'ble High Court of Kerala further held in the above reported case that:

"If the services of such an appointee is terminated without complying with the provisions of Sec. 25-F of the Industrial Disputes Act, he will not be entitled to reinstatement and retrenchment

compensation because in law, the effect of an order sending him out will not be one terminating his services, but will only be a declaration that he never had been appointed to that post."

40. In case of State of U. P. reported in (2006) 1 SCC 667, employees who are workmen within purview of the U.P. Industrial Disputes Act, they were protected under the said Act. Rules 42 and 43 of the U.P. Industrial Disputes Rules provide that before effecting any retrenchment in terms of the provisions of Sec. 6-N of the U.P. Industrial Disputes Act, the employees concerned would be entitled to a notice of one month or in lieu there of pay for one month and 15 days wages for each completed year of service by way of compensation. The Hon'ble Supreme Court held in this reported case that:

"If such a retrenchment is effected under the Industrial Disputes Act, the question of complying with the principles of natural justice would not arise. The principle of natural justice would be attracted only when the services of some persons are terminated by way of a punitive measure or thereby a stigma is attached".

41. In the present case admittedly, neither show cause notice was issued nor departmental inquiry was held by the Party II against these 72 workmen before terminating their services. Their appointments were without obtaining prior approval of the Registrar of Co-op. Societies, Goa. Their services are terminated under provisions of the Industrial Disputes Act, 1947. The termination is not by way of stigma. Considering these admitted facts, I hold that decisions given by the Hon'ble High Court of Kerala in case of Eranalloor Service Co-op. Bank Ltd., and by the Hon'ble Supreme Court in case of State of U.P. are squarely applicable to the present case. Relying upon these decisions, it can safely be concluded that, issuance of show cause notice and of holding departmental inquiry against these 72 workmen before termination of their services was not necessary. Holding of the departmental inquiry would be an empty formality. The principles of natural justice are also not applicable. I, therefore, do not agree with argument advanced by the representative of the workmen.

42. Sec. 25-F of the said Act, 1947 lays down conditions precedent to of retrenchment of workmen. Clause (a) under this section makes mandatory to give to the workman one month's notice in writing indicating reasons for retrenchment or to make payment of wages for the period of the notice in lieu of such notice. Clause (b) under this section further lays down for payment to the workman, of compensation which shall be equivalent to 15 days average pay for every completed year of continuous service or any part there of in excess of six months. The Party II has pleaded in para No. 18 of its written statement that while terminating services of the 72 workmen it has paid one month's wages in lieu of notice and compensation as permissible under the said Act, 1947. The workman,

Mahabaleshwar Misal, who is examined on behalf of the workmen, admitted in his cross examination that all the workmen have received pay orders alongwith the termination letters and that the pay orders are encashed by the workmen. Thus, the pleading from para No. 18 of written statement coupled with the admission given by the workman, Mahabaleshwar Mishal leads to logical conclusion that the Party II has complied with provisions contained in Sec. 25-F(a) and (b) of the said Act, 1947. Even for the sake of argument, assuming that these provisions are not complied with since the appointments of these 72 workmen are without the authority of law and ab-initio void, relying upon decision given by the Hon'ble High Court of Kerala in case of Eranalloor Service Co-op. Bank Ltd., I hold that non compliance with these provisions will not be a ground to hold that termination of services of the workmen is illegal and unjustified.

43. As per provision contained in Sec. 25-G of the said Act, 1947, where any workman in an industrial establishment is to be retrenched and he belongs to a particular category of workman in that establishment, in the absence of any agreement between the employer and the workman in this behalf, it is mandatory for the employer to retrench the workmen who was the last person to be employed in that category, unless for reasons to be recorded he retrenches any other workman. In the present case, termination of services of the 72 workmen by the Party II is in compliance with the directions given by the Registrar for Co-op. Societies in his letter dated 31-5-1995 (Exb. 12) and which are binding upon by the Party II. Therefore, the question of making compliance with provisions of Sec. 25-G of the said Act, 1947, does not arise.

44. Section 25-H of the said Act, 1947, provides that, when any workmen are retrenched, and the employer proposes to take into his employer any persons, he shall, in such manner as may be prescribed, give an opportunity to the retrenched workmen to offer themselves for re-employment, and such retrenched workmen who offer themselves for re-employment shall have preference over other persons. The Party II out of these 72 workmen has re-appointed 28 workmen in its establishment. There is no sufficient and convincing evidence on behalf of the workmen to hold that the Party II has committed breach of the provisions contained in Sec. 25-H of the said Act, 1947.

45. In case of Maharashtra State Co-op. Bank Ltd., Mumbai, respondent No. 1 file an application under Sec. 33-C(2) of the said Act, 1947 before the Labour Court for seeking monetary benefits of settlements of the year 1994 and 1997. The Labour Court allowed the application. The petitioner Bank challenged the order passed by the Labour Court, by way of Writ Petition in the Hon'ble High Court of Bombay. There was one more settlement of the year 1998 whereunder union had agreed to forgo benefits arising out of two settlements of 1994 and 1997. Prior to the settlement of the year 1998, the Commissioner for Co-operation had issued

directions to the Bank to terminate services of the temporary employees. The Respondent No. 1 resigned in the year 1997. He was not a party to the settlement of 1998 to claim benefit of the settlements of 1994 and 1997. The Hon'ble High Court pleased to hold that the Labour Court committed error in coming to the conclusion that the benefit of said two settlements was available and ought to be given to the respondent No. 1. The Hon'ble High Court observed in para No. 17 of the Judgment that the directions given by the Commissioner for Co-operation to terminate services of the employees were binding on the Bank, being statutory directions issued under the provisions of Co-op. Societies Act.

46. In the present case, the Registrar for Co-op. Societies, Goa under letter dated 31-5-1995 (Exb. 12) informed the Bank/Party II that it has issued orders of appointments to 56 clerks and 15 peons/sub-staff without obtaining approval of creation of such number of posts by Registrar of Co-op. Societies in defiance with directives at para No. 1 of order dated 18-6-1993 issued by the State Government (Exb. E-2). Therefore, the Registrar for Co-op. Societies under this letter directed the Bank to terminate services of 56 clerks as per page Nos. 5 to 8 and of 17 peons/watchmen as per pages 8 and 9 of Annexure-III wherein he has not accorded approval for creation of such number of posts. These 72 workmen are from those whose names are stated in page Nos. 5 to 9 attached to the letter dated 31-5-1995 (E-12). Such direction given by the Registrar for Co-op. Societies Goa, in the said letter dated 31-5-1995 is the statutory direction issued under the provisions of the Maharashtra Co-op. Societies Act, 1960 as applied to the State of Goa and as such, it was binding upon the Party II. There was no option for the Party II but to follow such statutory direction. Action taken by the Party II in the shape of termination of services of these 72 workmen is in compliance with this statutory direction. In view of this position, above discussion, finding given to issue No. 3 and by relying upon decisions given by the Hon'ble High Court of Kerala in case of Eranalloor Service Co-op. Bank Ltd., and by the Hon'ble Supreme Court in case of State of U.P., I agree with argument advanced by learned advocate of Party II. I answer the issue in affirmative.

47. **Issue No. 5:** The Hon'ble High Court of Bombay (Aurangabad Bench) held in case of Keval Bana Gopal Mali and others reported in (1998) II 842 which is already referred that, since the very appointments of 173 persons were illegal, the so called employees had no right of employment and they could not be reinstated and continued in employment. In the present case also, it is proved that the appointments of the 72 workmen are illegal and without procedure. If the reliefs as prayed for by these 72 workmen who are done out of their service are granted, that will amount in legalizing illegality which is committed in making their appointments. In view of these circumstances and findings given to issues No. 1 to 4, I answer this issue in negative.

As a result of finding given to issue Nos. 4 and 5, I proceed to adjudicate the dispute by passing order as follows:

ORDER

- 1 It is hereby adjudicated that the action of the management of the Bicholim Urban Co-op. Bank Ltd., Bicholim Goa, in terminating the services of the 72 workmen w.e.f. 12-6-95 is legal and justified.
- 2 It is hereby adjudicated that the workmen are not entitled to any reliefs.
- 3 No order as to costs.
- 4 The Award be submitted to the Government of Goa as per provision contained in Section 15 of the Industrial Disputes Act, 1947.

Sd/-
Dilip K. Gaikwad,
Presiding Officer,
Industrial Tribunal-
-cum-Labour Court-I.

Notification

No. 28/18/2007-LAB/1141

The following Award passed by the Industrial Tribunal of Goa, at Panaji-Goa on 15-10-2007 in reference No. IT/32/97 is hereby published as required by Section 17 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947).

By order and in the name of the Governor of Goa.

Hanumant T. Torsarkar, Under Secretary (Labour).

Porvorim, 13th November, 2007.

IN THE INDUSTRIAL TRIBUNAL-CUM-LABOUR
COURT-I AT PANAJI

(Before Dilip K. Gaikwad, Presiding Officer)

Case No. IT/32/97

Lavu Toraskar,
Taj Holiday Village Employees Union,
Singerim,
Bardez, Goa. ... Workman/Party I

V/s

M/s. Taj Holiday Village,
Singerim,
Bardez, Goa. ... Employer/Party II

Party I/Workman - is represented by Subhash Naik (representative).

Party II/Employer - is represented by Adv. P. J. Kanat.

A WARD

(Passed on this 15th day of October, 2007)

This is a reference under Section 10(1)(d) of the Industrial Disputes Act, 1947 (hereinafter in short referred to as the said Act, 1947).

1. Facts giving rise to the present reference, stated in brief, are as follows:

The Government of Goa in exercise of powers conferred on it by Section 10(1)(d) of the said Act, 1947, under order dated 23-5-1997 has referred to this Industrial Tribunal following dispute for adjudication:

i) Whether the action of the management of M/s. Taj Holiday Village, Singerim, Bardez, Goa in terminating the services of Shri Lavu Toraskar Security-Guard, with effect from 10-7-1996 is legal and justified?

ii) If not, to what relief the workman is entitled?

2. In response to notices, both parties put their appearance in this Industrial Tribunal. Party I presented his claim statement on 4th September, 1997 at Exb. 4. It appears from claim statement that the Party II is a Five Star Hotel. Party I was employed as security guard in establishment of Party II with effect from 1-7-1989. The Party I was discharging his duties as security guard honestly and efficiently. He is Vice-President of Taj Holiday Village Employees Union. The Party II issue charge-sheet on 25-3-1995 setting out allegation of misconduct against him. He came to be suspended by the Party II from the very date of the charge sheet. By giving reply under letter dated 17-4-1995 he denied charges set out against him in the charge sheet. The Party II appointed Adv. S. V. Patil as Enquiry Officer who in turn held inquiry against the Party I into the allegations of misconduct. The Enquiry Officer after holding inquiry held the Party I guilty of misconduct, by recording findings on 10-6-1996. The Party II issued show cause notice on 26-6-1996 and called upon the Party I to explain as to why his services should not be terminated. The Party I gave replies to this show cause notice on 4-7-1996 and on 8-7-1996. The Party II terminated his services with effect from 10-7-1996. He raised Industrial Dispute on 18-7-1997 by placing demand before the Party II for reinstatement with full back wages and continuity in the service. The Party II turned down his demand. Therefore, he raised Industrial Dispute before Assistant Labour Commissioner/Conciliation Officer, Government of Goa, Mapusa. Conciliation Proceedings held by the Assistant Labour Commissioner ended in failure, as a result, the Government of Goa under its order dated 23-5-1997 has referred to this Industrial Tribunal the dispute for adjudication as stated earlier.

3. According to the Party I, charge sheet issued against him was very vague and it was in violation of Provisions of Service Rules. The departmental inquiry

held against him is in violation of principles of natural justice. The charges levelled against him are not proved. Findings recorded by the Enquiry Officer are perverse. Termination of his service is illegal and unjustified. Punishment of dismissal from service imposed upon him is highly disproportionate and unjust having regard to facts and circumstances of the case. Therefore, by presenting the claim statement he prayed for setting aside his dismissal from the service, and for reinstatement with full back wages and with continuity in the service.

4. The Party II file its written statement on 29-9-1997 at Exb. 5. It appears from written statement that the Party II which is a Five Star Hotel is duly registered under Companies Act, 1956. The Party II is not governed by Provisions of Industrial Employment (Standing orders) Act, 1946, but by the Service Rules framed and adopted pursuant to settlement dated 2-3-1987 arrived at conciliation under Section 2(p) read with Section 18(3) of the said Act, 1947. This Service Rules are binding on all workmen as per contract of employment. The Party I who was employed in establishment of the Party II as security guard with effect from 1-7-1989 was confirmed in the service with effect from 1-1-1991. As a security guard duties of Party I were to safe-guard property and belongings of the Party II, to protect safety of guests, employees, officers and managers etc., to keep constant check on fire hazards, to monitor external such as taxi-hire by guests, coach arrivals/ departures, to record mileage and to check incoming and outgoing materials etc. On 20-3-1995 the Party I was scheduled in third shift commencing from 00.00 hours to 8.00 hours of 21-3-1995. The Party I reported to his duty at 22.40 hours on 20-3-1995 for the scheduled shift. He went along with a car/jeep driver, Eric at about 22.45 hours to main kitchen. He started interfering in telephonic conversation which was going on between Murley and Chef Angelo. The said Murley served food to the Party I after sometime. When the said Murley, after his duty hours were over, left the kitchen at about 23.50 hours and when he came to time office in order to go to home, the Party I came from check post cabin and assaulted the said Murley without any provocation. The Party I being security-guard engaged to protect employees, officers, managers and property of the hotel, involved himself in assaulting one of the officers of the Party II, which is a very serious act of misconduct affecting very discipline of the hotel. Therefore, the Party II issued show cause notice on 21-3-1995 and called upon the Party I to show cause in writing within two days from receipt of the notice as to why disciplinary action should not be taken against him. The Party I came to be suspended pending the inquiry as his presence in the hotel was detrimental to the interest of the hotel. The Party II did not find that, explanation given by the Party I on 22-3-1995 to the show cause notice was satisfactory. The Party II issued charge sheet setting out allegations of misconduct against the Party I. The allegations are as follows:

I. Disorderly, indecent or improper behaviour on the premises of the establishment adversely

affecting the discipline or reputation of the establishment.

- II. Commission of any act subversive of discipline or good behaviour on the premises of the establishment adversely affecting the working or discipline in, or reputation or discipline in, or reputation of the establishment.*
- III. Wrongful interference with the work of other workmen or any other person authorized by the management to do any work.*
- IV. Assault in the premises of the establishment against any superior or any employee of the establishment affecting the discipline or work or business or reputation of the employer.*
- V. Any conduct prejudicial to the interest or reputation of the establishment of the employer.*

5. The Party II conducted inquiry by appointing advocate, S. V. Patil as Enquiry Officer into the allegations of misconduct levelled against the Party I. He was represented by Adv. Keshav Prabhu in the departmental inquiry. He was given full opportunity to defend himself. The Enquiry Officer, after holding inquiry, recorded findings on 10-6-1996 and held the Party I guilty of the allegations of misconduct stated at Sr. Nos. 2 to 4 above. Allegations proved against the Party I amount to major misconduct. General Manager of the Party II, pursuant to findings recorded by the Enquiry Officer issued notice on 20-6-1996 and called upon the Party I to show cause as to why proposed punishment should not be imposed upon him (Party I). Explanation given by the Party I to this show cause notice was not satisfactory. Therefore, the Party II by its order dated 10-7-1996 terminated service of Party I with immediate effect. Management of the Party II has lost confidence in the Party I who is black belt holder of 'Karate'. He is a threat to officers working in establishment of the Party II. Termination of his service is legal and justified. Therefore, the Party I is not entitled to any of the reliefs claimed by him.

6. The Party II in its written statement denied all contentions which are raised by the Party I in his claim statement and which are adverse to his interest.

7. On basis of pleadings of both parties the then learned Presiding Officer framed issues on 28-10-1997 at Exb. 6. The issues are as follows:

- 1 Whether the Party I proves that the domestic inquiry held against him is not fair and proper ?
- 2 Whether the charges of misconduct levelled against the Party I are proved to the satisfaction of the Tribunal by acceptable evidence ?
- 3 Whether the Party I proves that the action of the Party II in terminating his services with effect from 10-7-1997 is illegal and unjustified ?

4 What relief ?

5 What Award ?

8. The then learned Presiding Officer treated the issue Nos. 1 and 2 as preliminary issues. The Party I examined himself at Exb. 8, while the Party II examined the Enquiry Officer, Adv. S. V. Patil at Exb. 9. The then learned Presiding Officer by his reasoned order dated 11-2-2004 answered the issue No. 1 in negative, and issue No. 2 in affirmative. He held that the domestic inquiry conducted against the workman, Shri Lavu Toraskar (Party I) is fair and proper, and that the Workman/Party I is guilty of the charge levelled against him in the chargesheet dated 25-3-1995 which constitutes misconduct under Clause 21 (XI) (XII) (XL) (XLIV) of the Service Rules of the employer/company.

9. The order dated 11-2-2004 whereunder the then learned Presiding Officer decided the preliminary issues No. 1 and 2 is not challenged by the Party I. It follows that this order has attained finality. Since the issues No. 1 and 2 are finally decided as preliminary issues on merits by the then learned Presiding Officer, I am left with job to decide only the remaining issues No. 3 to 5. My findings on these issues number 3 to 5 are as follows:

Issue No. 3: In negative.

Issue No. 4: In negative.

Issue No. 5: As per order below.

REASONS

10. *Issue No. 3:* The Party II which is a companies duly registered under Indian Companies Act, 1956, is running Five Star Hotel at Village Sinquerim which is in Bardez Taluka at Goa. The Party I was appointed as security guard with effect from 1-7-1989 in establishment/hotel of the Party II. He came to be confirmed in the service as security guard with effect from 1-1-1991. On 21-3-1995 the Party II issued notice against the Party I stating that on 20-3-1995 the Party I reported at the hotel at about 22.40 hours to attend third shift which was from 00.00 hours of 20-3-1995 till 08.00 hours of 21-3-1995. The Party I went along with car/jeep driver, Eric at about 22.42 hours to main kitchen. By that time Murley Murti who was trainee Chef was talking on phone with Chef Angelo. The Party I started interfering in the telephonic conversation which was going on between the said Murley and Chef Angelo. The said Murley told the Party I to wait for a minute, and thereafter served food to the Party I. The said Murley after the duty hours were over left kitchen at about 23.50 hours in order to go to home. When he reached at the time office and when he was about to punch his time card "OUT" the Party I came from checkpoint cabin and started assaulting the said Murley without any provocation. This act on part of the Party I is a serious act of misconduct affecting very discipline of the hotel. Management decided to conduct an enquiry into the matter. Presence of the Party I in the premises is detrimental to the interest of the hotel. Therefore,

the Party II suspended the Party I pending the inquiry with immediate effect. The Party II by issuing this notice called upon Party I to show cause in writing within two days on receipt of this notice as to why disciplinary action should not be taken against him. Copy of the above notice is at page No. 9 in the inquiry proceedings produced at Exb. E-1 colly. The Party I by giving reply on 22-3-1995 to the show cause notice denied all allegations made against him. The reply is at page No. 11 in the inquiry proceedings. It appears from the copy of the chargesheet issued on 23-5-1995 produced at page No. 12 in the inquiry proceedings that following allegations of misconduct were made against the Party I:

- I. *Disorderly, indecent or improper behaviour on the premises of the establishment adversely affecting the discipline or reputation of the establishment.*
- II. *Commission of any subversive of discipline or good behaviour on the permises of the establishment adversely affecting or likely to affect adversely the working or discipline in, or reputation of the establishment.*
- III. *Wrongful interference with the work of other workmen or of any other person authorized by the management to do any work.*
- IV. *Assault in the premises of the establishment against any superior or any employee of the establishment affecting the discipline of work or business or reputation of the employer.*
- V. *Any conduct prejudicial to the interest or reputation of the establishment of the employer.*

11. The Party II called upon the Party I to file reply on or before the date of inquiry. Thereafter, the Party II appointed advocate, S. V. Patil as Enquiry Officer to make inquiry in to the allegations of misconduct levelled against the Party I. The Party I after holding inquiry recorded findings that the charges which are at Sr. Nos. 2 to 4 in the charge sheet and which are reproduced above are proved against the Party I. Accordingly he submitted report to the Party II. Copy of the report dated 10-6-1996 is at page No. 103 to page No. 111 in the inquiry proceeding (Exb. E-1, colly).

12. Representative of the Party I argued that the entire episode which is alleged to have been taken place is because of the employee by name Murley who was working in the kitchen, kept the Party I waiting for food. The employee, Murley did not sustain visible hurt due to the assault which is alleged to have been made by the Party I. The allegations of misconduct levelled against the Party I do not amount to major misconduct. Warning or stoppage of increment would have been proportionate punishment instead of dismissal of the Party I from service. Punishment of dismissal which is of extreme nature is highly disproportionate having regard to the charge of

misconduct proved against the Party I. Therefore according to him, action of the Party II in terminating service of the Party I will have to be held as illegal and unjustified. To substantiate his argument he relied upon decision given by the Hon'ble Supreme Court in case of *Ramakant Misra v/s State of U.P. and others reported in SCLJ, 1950-1983 (Vol. 7) page 499*. In this reported case the management did not show that there was any blame worthy conduct of appellant during period of his service of 14 years prior to the date of misconduct which was consisting of use of language discrete, improper or disclosing a threatening posture. The misconduct was only on one occasion. In light of these facts, the Hon'ble Supreme Court pleased to set aside dismissal of the appellant and to direct his reinstatement by withholding of two increments. Facts of this reported case are different from that of the present one. With respect, I am of the opinion that this decision will not be helpful to the Party I to challenge dismissal order passed by the Party II against the Party I.

13. To counter argument advanced by representative of the Party I, learned advocate of the Party II argued that, though the employed, Murley did not sustain visible hurts, it should be remembered that assault by the Party I is on the officer which is of superior rank. The Party I who was employed as security guard is involved in such incident which is clearly against the nature of the duties of the security guard and detrimental to discipline which is required to be maintained in such type of the establishment. The charge proved against the Party I amounts to major misconduct. Therefore, in his opinion, termination of service of the Party I by the Party II will have to be held as legal and justified. He relied upon decisions given by the Hon'ble Supreme Court in case of *Madhya Pradesh Electricity Board, Appellant v/s Jagadish Chandra Sharma, Respondents reported in 2005-I-CLR 1074* and by the Hon'ble High Court of Bombay in case of *Usha M. Mahadik, Petitioner v/s Parle Products Ltd., and another, Respondents reported in 2006 II CLR 372*.

14. In case of Madhya Pradesh Electricity Board the respondent was a muster roll labourer in organization of the appellant. He Physically assaulted his superior officer with a tension screw resulting in nose bleeding and fracture. He thereafter unauthorisedly remained absent for three weeks. After holding domestic inquiry his service was terminated. At the instance of the respondent reference was made to the Labour Court who in turn held that punishment of termination of service is harsh. The Labour Court directed reinstatement of the respondent without back wages. The employer filed an appeal before the Industrial Court challenging interference with the punishment. The Industrial Court restored order of termination. The Hon'ble High Court of Madhya Pradesh in Writ Petition upheld order of the Labour Court. The appellant took up the matter before the Hon'ble Supreme Court. It is held by the Hon'ble Supreme Court that:

"When punishment of termination is awarded for hitting and injuring a superior officer, supervising

the work of an employee, with no extenuating circumstance established, it cannot be said to be not justified and it cannot be termed unduly harsh or disproportionate.

15. It appears from facts of the reported case of Madhya Pradesh, Electricity Board, referred to above that, act of assault committed by the respondent employee was of grave nature. In addition, there was a ground of his unauthorized absence. Thus, these facts are clearly distinguishable from that of the present one. Therefore with respect I am of the opinion that it will not be appropriate to make decision from the reported case applicable to hold that, termination of service of the Party I is legal, justified and proportionate.

16. In case of Usha M. Mahadik referred to above the petitioner was charged with assaulting co-worker. The petitioner without any provocation caught hold of co-worker and assaulted the co-worker as a result the co-worker fell on the ground. Ultimately, two ladies rescued the co-worker. Even when she was taken away by other co-workers still petitioner did not stop and continued abusing and threatening the co-worker in filthy language. On basis of this the petitioner was charge-sheeted and domestic inquiry was conducted. The petitioner was held guilty and was dismissed from the service. On reference Labour Court held that the inquiry was fair and just. That, finding of guilt was not perverse and dismissal was justified. The petitioner took the matter on Writ Petition before the Hon'ble High Court of Bombay. In light of evidence on record the Hon'ble High Court held that the findings given by Labour Court that there is no perversity in the decision arrived at by Enquiry Officer cannot be faulted. The Hon'ble High Court further held in para No. 5 of the judgment that:

"In so far as the punishment is concerned in my opinion the misconduct which is alleged of assault by the petitioner on the co-worker is a serious case and the punishment given of discharge of workmen is appropriate and cannot be interfered with."

17. Facts of the above reported case of Usha M. Mahadik are similar to that of the present one. I, therefore, hold that, decision from this reported case is squarely applicable for effectual adjudication of the issue. It is not in dispute that the said employee, Murley is superior to the Party I. It is true that the employee, Murley did not sustain visible injury due to act of assault committed by the Party I. Even then, the fact which remains there is that the Party I has assaulted his superior. The charge proved against the Party I as held by the then learned Presiding Officer amounts to misconduct as defined under the Service Rules. Xerox copy of Service Rules consisting of pages No. 48 to 80 is produced in the enquiry proceedings (Exb. E-1, colly). Dismissal from the service is one of the punishments provided under Rule of these Service Rules. Rule 23 (f) read with sub-rule (3) lays down by way of inference that punishment of dismissal on the ground of

misconduct can be imposed after holding inquiry. The Party II held departmental inquiry, which is condition - precedent for imposition of punishment of dismissal against the Party I. The then learned Presiding Officer has held that the departmental inquiry conducted against the Party I is fair and proper. Assault by the Party I on his superior is a serious matter. Such act committed by the Party I is against the nature of duties for which he was employed in establishment of the Party II. The action taken by the Party II in terminating services of the Party I is in accordance with the Service Rules. Besides it, there is evidence in the form of affidavit filed by E. A. Fernandes at Exb. 11 on behalf of the Party II, which discloses that the Party I was given warnings on 16-3-1991 and on 8-4-1991 for his negligent and irresponsible behaviour during discharge of his official duty. This witness is working as personal officer in establishment of the Party II. Xerox copies of the warning letters are produced at Exb. E-2 and E-3 respectively. Cumulative effect of evidence of this witness and of the warning letters discloses past behaviour/conduct of the Party I. In view of this position and relying upon decision given by the Hon'ble High Court of Bombay in case of Usha M. Mahadik referred to above, I conclude that the action taken by the Party II in terminating services of the Party I cannot be said to be illegal and unjustified and also disproportionate having regard to the nature of the act committed by the Party I. I do not agree with argument advanced by representative of Party I. My answer to the issue is in negative.

18. **Issue No. 4:** The Party I has requested for setting aside punishment of dismissal and for his reinstatement with full back wages and continuity in service. He did not succeed in proving that termination of his service is illegal or unjustified, and that it is disproportionate having regard to act of misconduct committed by him. Therefore, only on this ground it can safely be held that he is not entitled to any of the reliefs claimed by him.

19. Learned advocate of the Party II further submitted that the departmental inquiry conducted against the Party I is held to be fair and proper by the Industrial Tribunal. Therefore also, according to him the prayers made by the Party I will have to be turned down. In support of his submission he relied upon decision given by the Hon'ble Supreme Court in case of *Bharat Heavy Electricals Limited, Appellant v/s M. Chandrasekhar Reddy and others Respondents*, reported in 2005 1 CLR 959. In this reported case the respondent employee had deposited title deeds of his property with appellant by way of equitable mortgage. Later on, he stealthily

removed the deeds from custody of appellants. Therefore, disciplinary enquiry was initiated against him for the said misconduct. After inquiry he was discharged from service. Labour Court held that the punishment of discharge is harsh and therefore it directed reinstatement of the respondent. Writ Petition and Writ Appeal were dismissed. The Hon'ble Supreme Court held in appeal that:

"Labour Court wrongly exercised its jurisdiction under S. 11-A to alter or reduce the punishment in view of findings recorded by it that the domestic inquiry was fair and good. That, the misconduct was held approved and that the management has lost confidence in the respondent."

20. In the above reported case of Bharat Heavy Electricals Limited, nature of misconduct committed by the respondent employee appears to be of more serious nature than that of the misconduct committed by the Party I in the present case. However, it should be remembered that in the present case also, the domestic enquiry held against the Party I is held to be fair and proper, and the misconduct alleged against him is also held as proved. Submission made by learned advocate of the Party II merits consideration. In view of these circumstances and above discussion, I answer the issue in negative.

As a result of findings given to the issue Nos. 3 and 4, I proceed to adjudicate the reference by passing order as follows:

ORDER

- 1 It is hereby adjudicated that the action of the management of M/s. Taj Holiday Village Sinqueirm, Bardez, Goa (Party II) in terminating services of Shri Lavu Toraskar, security guard (Party I) with effect from 10-7-1996 is legal and justified.
- 2 It is hereby adjudicated that the Party I is not entitled to any of the reliefs claimed by him.
- 5 No order as to costs.
- 6 The Award be submitted to the Government of Goa as per provision contained in Section 15 of the Industrial Disputes Act, 1947.

Sd/-

Dilip K. Gaikwad,
Presiding Officer,
Industrial Tribunal-
-cum-Labour Court-I.